UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,806	10/15/2003	Jana H. Jenkins	RSW920030214US1	5137

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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/685,806	JENKINS, JANA H.
	Examiner	Art Unit	
	Thuy Dao	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>03</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>04 June 2007</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8 and 10-21* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-8 and 10-21* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☒ The drawing(s) filed on <u>10/15/03</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some *   c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on June 4, 2007 has been entered.

2. Claims 1-8 and 10-21 have been examined.

Response to Amendments

3. Per Applicant' s request, claims 1, 8, and 15 have been amended.

4. The objection to the abstract is withdrawn in view of Applicants' amendments.

5. The 35 USC §112, first paragraph rejection over claims 1-8 and 10-21 is withdrawn in view of Applicants' amendments.

Response to Arguments

6. The Applicant is thanked for a thorough reply.

a) The limitations "*providing message analysis critieria for analyzing messages for an end user of a computer program*" (Remarks filed April 12, 2007, lines 1-12):

PEX-Feb02 explicitly discloses:

"*providing message analysis criteria*" (e.g., page 41: 24-26, page 44: 11-13, page 44: 25-29: providing message analysis criteria as identifying at least one computer program component; page 41: 24-26, page 42: 3-5: providing message analysis criteria as idenfitying at least one properties file; page 42: 1-9, pp. 47-48: designating said analysis criteria through a criteria interface),

"*for analyzing messages for an end user of a computer program*" (e.g., page 42: 18-24, gathering/analyzing performacne data for application developers who are interested in understanding or improving the performance of their programs).

b) The limitations *"designating desired information of at least one type of message"* (Remarks filed April 12, 2007, page 10, lines 13-19):

The Applicant acknowledged that "Statistical, Profile, and Trace" are "different modes used to <u>collect performance data</u>" (Remarks, page 10, lines 15-17, emphasis added).

PEX-Feb02 further discloses said three modes lead to different performance data collection (page 41: 7-23). That is to say, "Statistical, Profile, and Trace" are three modes to collect performance data, which also generate three types of Statistical, Profile, and Trace messages (e.g., pp. 46-48, Creating PEX definition for Java performance collection; page 47, Figure 3-27, specifiying "Type : *STATS" as opposed to types *TRACE or *PROFILE, page 47, lines 5-6).

c) The limitations *"identifying instances of the at least one type of message based on the analysis criteria"* (Remarks, page 10, lines 20-24):

PEX-Feb02 exsplicitly discloses *identifying instances of the at least one type of message based on the analysis criteria* (e.g., page 42: 12-17, identifying report/result/log files as instances of Statistical, Profile, or Trace message; page 47, subsection 3, DFN (<Your Instance Name>); JOB (Jobname: <Your Instance>, User: QEJB, Number: *All)).

d) The limitations *"...the message analysis criteria identifies ... a predetermined time period..."* (Remarks, page 11, lines 4-16).

PEX-Feb02 does not explicitly disclose *[providing message analysis criteria which identifies]* a predetermined time period.

However, in an analogous art, PEX-Sep02 further discloses *[providing message analysis criteria which identifies]* a predetermined time period (e.g., page 2: 14-26, parameter INTERVAL(5) as a predetermined time period).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the teaching of PEX-Sep02 into that of PEX-

Feb02. One would have been motivated to do so to adjust between PEX's overhead and collection time in large or small systems as suggested by PEX-Sep02 (e.g., page 2: 20-26).

e) The limitations *"designating desire information [which] includes a message quantity and an estimated line count"* (Remarks, page 11: 17 – page 12: 7).

As set forth above, PEX-Feb02 and PEX-Sep02 discloses gathering/analyzing performance data (either Statistical, Profile, or Trace data) as messages associated with computer program code for an end user (an application developer).

In an analogous art, Yami discloses *"method and system provides for* <u>*receiving log data, writing information to a log file*</u> *based on the log data received ..."* (page 1, [0007], lines 4-6, emphasis added). Yami further discloses *the desired information includes a message quantity and an estimated line count* (e.g., [0030], [0045], [0055]).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the teaching of Yami into that of PEX-Feb02 and PEX-Sep02. One would have been motivated to do so to provide secure log files as suggested by Yami (e.g., [0002] and [0006-0010]).

Accordingly, Applicant's arguments are not persuasive. The examiner respectfully maintains grounds of rejection over claims 1-8 and 10-21.

Claim Rejections – 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 8 and 10-14 are rejected because the claimed invention is directed to non-statutory subject matter: *"A computer implemented system for analyzing messages*

... comprising: a criteria system ....; an information request system ...; an analysis system ...; and an output system ...", which are actually software program components as disclosed in Figure 2, Message Reporting System 18, and associated text in page 9, [0026].

The computer implemented system (Message Reporting System 18) amounts to Functional Descriptive Material: "Data Structures" representing descriptive material per se or "Computer Programs" representing computer listings per se.

Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Similarly, computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035. Accordingly, it is important to

distinguish claims that define descriptive material per se from claims that define statutory inventions. See MPEP 2106(I).

Under the principles of compact prosecution, claims 8 and 10-14 have been examined as the Examiner anticipates the claims will be amended to obviate these 35 USC §101 issues. The phrase has been treated as, for example, - -A computer [[implemented]] system for analyzing messages ...- - as disclosed in the specification (e.g., Figure 1, wherein computer system 12 is a tangible system having CPU 20, Memory 22, said Message Reporting System 18...).

Claim Rejections – 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 1-8 and 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over PEX-Feb02 (art of record, "Java and WebSphere Performance", section Performance Explorer PEX) in view of PEX-Sep02 (art of record, "Collecting and Analyzing PEX Trace Profile Data"), and further in view of Yami (art of record, US Patent Publication No. 2003/0236992 A1).

Claim 1:

PEX-Feb02 discloses a method, system, and program product (e.g., page 1, FIG. 1, page 1: 1 – page 2: 27; pp.3-5, sections 1.1-1.3) *for analyzing messages associated with computer program code* (e.g., page 41: 7-23), *the method comprising:*

providing message analysis criteria for analyzing messages for an end user of a computer program (e.g., page 39, section 3.7 Java application-level tools; page 41: 24-26; page 42: 1-9; page 42: 18-24),

wherein the message analysis criteria identifies at least one computer program component (page 41: 24-26, member QAPEXDFN in library; page 44: 11-13, run one or more application transactions; page 44: 25-29, OrderEntryBeans.jar),

at least one properties file (e.g., page 41: 24-26, library QUSRSYS; page 42: 3-5, files QAYPExxx in QPEXDATA)

to identify specific messages for analysis (e.g., page 41: 7-23: identify either Statistical, Profile, or Trace; pp. 46-48, PEX definition to identify specific messages with specific definition name, job name, associated user name, ...),

wherein the message analysis criteria is designated through a criteria interface (e.g., a criteria interface as a command window to enter PEX CL commands; page 42:1-9, starting and using PEX);

designating desired information for at least one type of message (e.g., page 46, Creating PEX definition from Java performance collection; pp. 47-48, designating desired information in PEX definition),

wherein the desired information is designated through an information request interface (e.g., page 47, FIG. 3-77, interface for Adding a PEX Definition); and

identifying instances of the at least one type of message based on the analysis criteria (e.g., page 42: 12-17, identifying report/result/log files as instances of Statistical, Profile, or Trace message; page 47, subsection 3, `DFN (<Your Instance Name>); JOB (Jobname: <Your Instance>, User: QEJB, Number: *All)`); and

analyzing the instances to determine the desired information (e.g., pp.42-44, Performance Trace Data Visualizer; pp.48-51, Collecting performance data for analysis).

PEX-Feb02 does not explicitly disclose *[providing message analysis criteria which identifies] a predetermined time period.*

However, in an analogous art, PEX-Sep02 further discloses *[providing message analysis criteria which identifies] a predetermined time period* (e.g., page 2: 14-26, parameter INTERVAL(5) as a predetermined time period).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the teaching of PEX-Sep02 into that of PEX-Feb02. One would have been motivated to do so to adjust between PEX's overhead and collection time in large or small systems as suggested by PEX-Sep02 (e.g., page 2: 20-26).

Neither PEX-Feb02 nor PEX-Sep02 explicitly discloses *[the desired information includes] a message quantity and an estimated line count.*

However, in an analogous art, Yami further discloses *the desired information includes a message quantity and an estimated line count* (e.g., [0030], [0045], [0055]).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the teaching of Yami into that of PEX-Feb02 and PEX-Sep02. One would have been motivated to do so to provide secure log files as suggested by Yami (e.g., [0002] and [0006-0010]).

Claim 2:

The rejection of claim 1 is incorporated. PEX-Feb02 also discloses *outputting the desired information* (e.g., page 48-51, Visualizer performance data with PTDV).

Claim 3:

The rejection of claim 1 is incorporated. Yami further discloses *computing an estimated translation cost based on the estimated line count* (e.g., [0045], [0055]).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the teaching of Yami into that of PEX-Feb02 and PEX-Sep02. One would have been motivated to do so as set forth above.

Claim 4:

The rejection of claim 1 is incorporated. Yami further discloses *the estimated line count is computed by determining a total of words added, changed or deleted within the instances, and dividing the total of words by a predetermined value* (e.g., [0023], [0029]). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the teaching of Yami into that of PEX-Feb02 and PEX-Sep02. One would have been motivated to do so as set forth above.

Claim 5:

The rejection of claim 4 is incorporated. Yami further discloses *the predetermined value is ten* (e.g., [0053-0055]). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the teaching of Yami into that of PEX-Feb02 and PEX-Sep02. One would have been motivated to do so as set forth above.

Claim 6:

The rejection of claim 1 is incorporated. Yami further discloses *at least one type of messages is selected from the group consisting of newly created messages, edited messages, and deleted messages, and wherein the instances of the at least one type of message are those that correspond to the at least one computer program component and that exist within the at least one properties file during the predetermined time period* (i.e., [0023], [0045], [0053]). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the teaching of Yami into that of PEX-Feb02 and PEX-Sep02. One would have been motivated to do so as set forth above.

Claim 7:

The rejection of claim 6 is incorporated. Yami further discloses *the estimated line count represents a translation estimate for the newly created messages and the edited messages* (e.g., [0029], [0053-0055]). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the teaching of Yami into that of PEX-Feb02 and PEX-Sep02. One would have been motivated to do so as set forth above.

Claims 8 and 10-14:

Claims 8 and 10-14 are computer system versions, which recite the same limitations as those of claims 1-7, wherein all claimed limitations have been addressed and/or set forth above. Therefore, as the references teach all of the limitations of the above claims, they also teach all of the limitations of claims 8 and 10-14.

Claims 15-21:

Claims 15-21 are program product versions, which recite the same limitations as those of claims 1-7, wherein all claimed limitations have been addressed and/or set forth above. Therefore, as the references teach all of the limitations of the above claims, they also teach all of the limitations of claims 15-21.

Conclusion

11. Any inquiry concerning this communication should be directed to examiner Thuy Dao (Twee), whose telephone is (571) 272 8570. The examiner can normally be reached on Tuesday, Thursday, and Friday from 6:00AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam, can be reached at (571) 272 3695.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273 8300.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the TC 2100 Group receptionist whose telephone number is (571) 272 2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

T. Dao
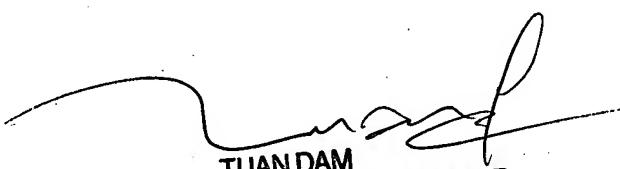
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